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No. 03-635

Supreme Court, U.S.
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In The

Supreme Court of the United States

WILLIE SANTONIO MANDERS,

Petitioner,

v.

WINSTON PETERSON, in his official capacity as Sheriff of Clinch County, Georgia,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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PARTIES TO THE PROCEEDING AND STATEMENT PURSUANT TO RULE 29.6

In addition to the parties listed by Petitioner, several additional parties (from the District Court) were not mentioned. Because the Eleventh Circuit Court of Appeals sometimes styled this case with a different name, they will be noted herein.

City of Homerville, Georgia Police Chief Thurman Lee was a defendant in District Court. Petition, Appendix at 1. City of Homerville police officer Bart Crews, Clinch County, Georgia Deputy Sheriff/Jailer Alan Brown, the City of Homerville, Georgia and Clinch County, Georgia were defendants in District Court. *Id.* None of these defendants were involved in the appeal proceedings in the Eleventh Circuit.

Winston Peterson, Sheriff of Clinch County, Georgia is the Respondent in this matter in his official capacity as a Georgia Sheriff. His potential liability in his personal, or individual, capacity is not at issue herein.

Pursuant to Supreme Court Rule 29.6, respondent states that there is no corporate entity involved in this matter.

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42 U.S.C. § 1983 ..... *passim*

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REASONS FOR DENYING THE WRIT

There is no compelling reason for the Court to grant the Petition in this case. Though the Petitioner's asserted claims are based upon federal law, 42 U.S.C. § 1983, the Petitioner's criticism of the Eleventh Circuit is based upon an assertion that the majority misinterpreted or misapplied state law. Under such circumstances, the Respondent contends that Supreme Court Rule 10 supports the denial of the Petition. Simply, "the asserted error consists of . . . [an alleged] misapplication of a properly stated rule of law." Supreme Court Rule 10.

This Court has already decided a similar case which outlined the law to be applied in circumstances such as those presented herein. *McMillian v. Monroe County, Alabama*, 520 U.S. 781, 117 S.Ct. 1734 (1997). Therein, this Court laid out the appropriate legal framework for determining whether sheriffs, in their official capacity, create state policy or county policy with regard to the areas in which they establish policy.

The Eleventh Circuit followed *McMillian's* framework in this case. Petitioner does not show otherwise. Rather, the Petitioner objects to the Eleventh Circuit's conclusions regarding the state of Georgia law. The Respondent asserts that the Eleventh Circuit was entirely correct in its analysis regarding the application of *McMillian's* framework to Georgia law. Regardless, because the result in this case rests upon such analysis, and not an analysis of federal law, this Court should deny the Petition.

As this Court stated in *McMillian*:

> The Court of Appeals for the Eleventh Circuit determined that under Alabama law, a Sheriff acting in his law enforcement capacity is not a

> policy maker for the county. Since the jurisdiction of the Court of Appeals includes Alabama, *we defer considerably to that Court's expertise in interpreting Alabama law*. *McMillian*, 520 U.S. at 786 (Emphasis supplied). *See also*, *Pembaur v. Cincinnati*, 475 U.S. 469, 484, n.13, 106 Sup. Ct. 1292, 1301, n.13 (1986) ("We generally accord great deference to the interpretation and application of state law by the Courts of Appeal").

In addition, *McMillian* pointed out that two of the three judges on the Eleventh Circuit's panel were based in Alabama. *McMillian, supra* at 786, n.3. In the present case, the author of the majority opinion for the *en banc* court, Honorable Frank M. Hull, is based in Georgia. Judge Hull has previously served as a State Court judge, Superior Court judge, and U. S. District Court judge in the State of Georgia, so the same deference is called for herein.

The Eleventh Circuit correctly followed this Court's prior precedents, particularly *McMillian*. Therefore, no compelling reason exists to grant the Petition.

RESPONSE TO PETITIONER'S STATEMENT OF THE CASE

For the most part, the Petitioner's "Statement of the Case" accurately reflects the procedural progression of this case. However, because there are a couple of factual inaccuracies, Respondent is compelled by Supreme Court Rule 15.2 to point out a couple of misstatements contained in the Petition.

First, Petitioner asserts that there is no evidence that Petitioner "punched" a law enforcement officer. Petition at 3, n.1. That is a misstatement of fact. (R2-107-13; Dep. of Chris Crews). There is evidence that Petitioner "punched" a police officer.

The Petitioner also erroneously states that Sheriff Peterson had no published policy regarding the use of force by deputies at the Clinch County jail. Petition at 3-4. Such assertion is simply incorrect. (R2-108-20; Exhibit 1; Dep. of Winston Peterson).

Finally, though not in the Statement of the Case, but rather Petitioner's brief, the Petitioner makes a serious misstatement with regard to his contention that "there is no dispute that: . . . Clinch County operates the Clinch County jail, App. 36." Petition at 19. In fact, it is clear both factually and legally that Sheriff Winston Peterson operates the Clinch County jail as is required of him by state law. Petition at 22 ("Sheriff Peterson's authority and duty to administer the jail in his jurisdiction flows from the State, not Clinch County.")

Further, Petitioner's statement that there is no dispute that "[n]o State funds would be used to pay any judgment against Sheriff Peterson if he were found liable for violations of § 1983" is an inaccurate description of the Eleventh Circuit's analysis. Rather, the majority noted that no Georgia law appeared to expressly require State funds to pay an adverse judgment against Sheriff Peterson, but it was clear that "both County and State funds are implicated . . . " Pet., App. at 46-47.

RESPONSE TO PETITIONER'S REASONS FOR GRANTING THE WRIT

The Petitioner puts forth three separate reasons for granting the Writ. Each reason is legally deficient and should not cause this Court to grant the Petition.

I. THE ELEVENTH CIRCUIT PROPERLY APPLIED *McMILLIAN V. MONROE COUNTY, ALABAMA.*

The Petitioner either misstates, or misunderstands, the Eleventh Circuit's analysis of *McMillian*. Petitioner asserts that the Eleventh Circuit's decision in this case will "shield all governmental entities for whom the sheriff acts, including agents of the sheriff, from § 1983 claims for use of excessive force. . . . " Petition at 17. That is simply an incorrect description of the Eleventh Circuit's holding. Clearly, the Eleventh Circuit's decision dealt only with claims against the Sheriff *in his official capacity*. In conducting such analysis, the Eleventh Circuit appropriately followed *McMillian* and a number of this Court's decisions dealing with Eleventh Amendment immunity. *E.g., Regents of the University of California v. Doe*, 519 U.S. 425 (1997).

The Eleventh Circuit did not eliminate excessive force claims under 42 U.S.C. § 1983. In fact, it is clear from the decisions of both the District Court in this case and the Eleventh Circuit's decision that such claims may be pursued against those individuals who are alleged to have committed constitutional violations. Petition, App. at 7, n.7; App. at 156-57. In this case, the Petitioner's claims against Sheriff Peterson, in his individual capacity, and the other defendants just happened to be disposed of

either by way of summary judgment or dismissal. *Id.;* Petition, App. 6, n.5.

The concerns that Petitioner sets out are unfounded. The Eleventh Circuit's decision in this case does not change civil rights liability in the drastic way described by Petitioner. Actually, it does not even change civil rights liability within the Eleventh Circuit or in District Courts in the State of Georgia. The decision by the Eleventh Circuit in this case simply recognized the appropriate application of this Court's decisions regarding both 42 U.S.C. § 1983 and the Eleventh Amendment to the United States Constitution with respect to sheriffs in the State of Georgia.

As the Eleventh Circuit noted, they had not previously been asked to specifically analyze the issue presented herein with regard to Georgia sheriffs. They had done so with regard to Alabama sheriffs and this Court affirmed the Eleventh Circuit's view of the applicable federal law in *McMillian, supra.*

The Eleventh Circuit's *en banc* decision is correct in all respects. *See, McMillian, supra*; and *Regents of the University of California v. Doe, supra.*

II. IT IS LEGALLY INSIGNIFICANT WHETHER THE MAJORITY OPINION CONFLICTS WITH OTHER FEDERAL COURTS OF APPEALS BECAUSE STATE LAW WITHIN THOSE CIRCUITS MAY DIFFER FROM GEORGIA LAW.

Petitioner asserts that there should be some concern because the Eleventh Circuit's decision in this case appears to reach a result different from that reached by other Circuit Courts in similar, but not identical, circumstances.

The Petitioner likely describes the issue in that manner in an effort to convince this Court that this is one of those cases in which "a United States court of appeals has entered a decision in conflict with the decision of another United States court of appeals on the same important matter. . . . " Supreme Court Rule 10(a). However, even a cursory comparison of the decisions from other circuits relied upon by the Petitioner and the Eleventh Circuit's decision in this case reveals that the conflict, to the extent there is one, is between state law in those various jurisdictions. The Eleventh Circuit properly followed applicable federal law, *McMillian, supra* and *Regents of the University of California v. Doe, supra*. There is no conflict, only differing results based upon the proper application of federal law.

Petitioner expresses a concern that if the "majority position were adopted as a fair reading of *McMillian*, each of these circuits would have to re-examine the relevant state law." Petition at 25. This Court, in *McMillian,* has already rejected any such concern.

> Petitioner argues that this conclusion will create a lack of uniformity in Alabama and throughout the country. First, he argues that it is anomalous to have 67 different 'state policy makers' in the person of Alabama's 67 county sheriffs, all of whom may have different 'state law enforcement policies' in their counties. Second, he points out that most Federal Courts of Appeals have found county sheriffs to be county, not state, officials, and he implies that our affirmance of the Court of Appeals will either call those decisions into question or create an unacceptable patchwork

> of rulings as to § 1983 liability of counties for the acts of their sheriffs. *We reject both arguments.*
>
> . . .
>
> Petitioner's second concern is that under our holding here, sheriffs will be characterized differently in different states. But while it might be easier to decide cases arising under § 1983 and [*Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)] if we insisted on a uniform, national characterization for all sheriffs, such a blunderbuss approach would ignore a crucial axiom of our government: the states have wide authority to set up their state and local governments as they wish. Understandably, then, the importance of counties and the nature of the county government have varied historically from region to region and from State to State.
>
> . . .
>
> Thus, since it is entirely natural that both the role of sheriffs and the importance of counties vary from State to State, there is no inconsistency created by court decisions if the sheriff is a county officer in one state and not in another. *McMillian, supra,* 520 U.S. at 793-95 (Emphasis supplied).

Respondent also believes that it is worth pointing out that the Eleventh Circuit's decision did not declare sheriffs to be state policy makers in some categorical, all or nothing approach. Both *McMillian* and this Court's Eleventh Amendment jurisprudence have cautioned against such an approach. The Eleventh Circuit followed this Court's directives and decided that Georgia sheriffs were state policy makers, thus entitled to Eleventh Amendment

immunity, only with regard to the particular function at issue in this case.

III. PETITIONER IS INCORRECT THAT THIS CASE RAISES ISSUES AS TO THE CONTINUED VIABILITY OF § 1983 AS A REMEDY IN CASES INVOLVING COUNTY SHERIFFS

As noted previously, Plaintiffs in cases such as the present one are not simply left with no potential remedies. The Eleventh Circuit was clear that this case did not address the individual liabilities of sheriffs or their deputies. In this case, summary judgment was determined to be appropriate with regard to Sheriff Peterson in his individual capacity, though on grounds unrelated to the issues raised on appeal. Further, the alleged primary actor, the Sheriff's chief jailer, was sued as well. However, the claims against him were dismissed. The Eleventh Circuit's decision in this matter does nothing to change the availability of remedies with respect to individuals that commit constitutional violations. Clearly, it does affect the Petitioner's ability to pursue claims against sheriffs in their official capacity. However, nowhere is it written in the Eleventh Amendment, or 42 U.S.C. § 1983, that liability against such a defendant is guaranteed. Petitioner obviously is concerned about the potential jury appeal between suing an individual officer and suing a faceless governmental entity. That is an insufficient reason for this Court to grant the Petition.

Further, Petitioner seriously misstates the holding of the Eleventh Circuit Court of Appeals in a case somewhat related to this matter. *Grech v. Clayton County*, 335 F.3d 1326 (11th Cir. 2003). Both this case and *Grech* were orally argued before the *en banc* Eleventh Circuit on the same

day. Petitioner states that "the Eleventh Circuit has decided that the county is entitled to Eleventh Amendment immunity for claims brought against a sheriff under § 1983 in his or her official capacity." Petition at 27, n.23. *Grech* held no such thing. In fact, *Grech* was not an Eleventh Amendment case. *Grech* did not address Eleventh Amendment issues but it simply applied this Court's decision in *McMillian* to determine that Clayton County, under traditional governmental entity liability principles in § 1983 cases, could only be held liable for its own policies, and not those of a state policy maker. The state policy maker in that instance did happen to be the sheriff. However, *Grech* in no way extended Eleventh Amendment immunity to a county.

Finally, the Respondent points out that the Petitioner, and future plaintiffs, have available numerous remedies under state law. Petitioner is not being left without a remedy as a result of the Eleventh Circuit's decision. Accordingly, there is no issue presented in the Petition for Writ of Certiorari that should lead this Court to grant the Petition.

CONCLUSION

For the foregoing reasons, the Petition for Writ of Certiorari should be denied.

This 24th day of November, 2003.

Respectfully submitted,

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